



11 CFR Part 115

[NOTICE 2022-09]

Federal Contractors

AGENCY: Federal Election Commission.

ACTION: Notice of Disposition of Petition for Rulemaking.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking filed on November 18, 2014, by Public Citizen. The petitioner asked that the Commission amend its regulations regarding federal contractors to include certain factors for determining whether entities of the same corporate family are distinct business entities for purposes of the prohibition on contributions by federal contractors. Because there were not four affirmative votes in support of the petition, the Commission is not initiating a rulemaking.

DATES: [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: All comments must be in writing, addressed to Mr. Robert Mark Knop, Assistant General Counsel, and submitted in hard copy form to the Federal Election Commission, 1050 First St. NE, Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Joseph P. Wenzinger, Attorney, Office of General Counsel, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: Part 115 of the Commission's regulations prohibits federal contractors from making contributions or expenditures to any political party, political committee, or federal candidate, or to any person for any political purpose or use. 11 CFR 115.2(a); *see also* 52 U.S.C. 30119(a)(1). Part 115 further prohibits any person from knowingly soliciting a contribution from any federal contractor. 11 CFR 115.2(c); *see also* 52 U.S.C. 30119(a)(2). On November 18, 2014, the Commission

received a Petition for Rulemaking from Public Citizen asking the Commission to amend 11 CFR Part 115 to include certain factors for determining whether entities of the same corporate family are distinct business entities for purposes of these prohibitions.

The Commission published a Notice of Availability (“NOA”) on March 30, 2015 to ask for public comment on the petition. 80 FR 16595 (Mar. 30, 2015). The Commission received approximately 19,750 comments on the NOA.

After considering the comments received, the Commission voted on a motion to initiate a rulemaking to adopt the regulations proposed by the petition. Three Commissioners voted to initiate a rulemaking based on the petition, and three Commissioners voted against initiating a rulemaking. Certification, Motion to Open a Rulemaking on REG 2014-09 in Response to Public Comment, Agenda Document 15-60-A (Nov. 13, 2015) at 2, <https://sers.fec.gov/fosers/showpdf.htm?docid=346292>.

Commissioners voting to initiate a rulemaking explained that new rules may be necessary to prevent federal contractors from creating “nominal subsidiaries” to make political contributions. *See* Audio Recording of Discussion on REG 2014-09 Amendment of 11 C.F.R. 115 (Nov. 10, 2015) (“Audio Recording”) at 1:51-4:10, <https://www.fec.gov/resources/audio/2015/2015111004.mp3> (statement of Commissioner Ellen L. Weintraub) (stating that Act’s restrictions “are at risk of being rendered unenforceable if corporations can skirt the law by creating nominal subsidiaries to make political contributions”); Statement of Commissioner Ann M. Ravel on REG 2014-09 (Amendment of 11 C.F.R. Part 115) at 2, <https://sers.fec.gov/fosers/showpdf.htm?docid=347074> (stating that Act’s restrictions could be “easily evaded by technical legal maneuvering that leaves the intent of the law completely thwarted”). On the other hand, a Commissioner voting against initiating a rulemaking explained that he was “persuaded by comments” arguing that Congress passed the federal-contractor ban “against a background of common-law corporate principles” that the Commission should not disrupt

in the absence of direction by Congress. Audio Recording at 4:13-8:43 (statement of Vice Chairman Matthew S. Petersen) (stating that Commission has not “been instructed by Congress to disrupt that background understanding, though they’ve amended the law on a number of different occasions” in the “nearly four decades” the Commission has been applying the federal-contractor ban).

The Act requires an affirmative vote of at least four Commissioners to take any action to amend a regulation. *See* 52 U.S.C. 30106(c) and 30107(a)(8). Accordingly, the Commission is not initiating a rulemaking. *See also* Definition of “Express Advocacy,” Notice of Disposition of Petition for Rulemaking, 64 FR 27478 (May 20, 1999) (denying a petition to initiate a rulemaking because it did not garner the affirmative vote of four Commissioners).

Copies of the comments, the NOA, the Petition for Rulemaking, and related documents are available on the Commission’s website, <https://www.fec.gov/fosers/> (reference REG 2014-09 Amendment of 11 CFR 115)).

Dated: March 28, 2022.

On behalf of the Commission,

Allen J. Dickerson,

Chairman,

Federal Election Commission.

BILLING CODE: 6715-01-P

[FR Doc. 2022-06898 Filed: 3/31/2022 8:45 am; Publication Date: 4/1/2022]